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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------|
| 10/755,022 | 01/08/2004 | Scott D. Stammer | 2937.09US02 | 8948 |
| 24113 | 7590 | 03/02/2005 | EXAMINER JOYCE, HAROLD | |
| PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100 | | | ART UNIT 3749 | PAPER NUMBER |

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/755,022 | STAMMER ET AL. |
| | Examiner | Art Unit |
| | Harold Joyce | 3749 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 December 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-33 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-33 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Watson.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-9, 11-13 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson in view of Bockwinkel. Watson discloses the claimed invention except for the labyrinthine seal and the door having an inner portion. Bockwinkel teaches that it is known to provide a door with a labyrinthine seal as set forth at column 6, line 59 to column 7, line 34 and an inner portion as set forth at column 3, lines 35-38. It would have been obvious to one having ordinary skill in the art at the time the invention was made for the seal of Watson to be a labyrinthine seal and an inner portion, as taught by Bockwinkel in order to prevent communication of ambient air through the sealing strip and improve insulation.

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5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watson in view of Sherman. Watson discloses the claimed invention except for composite acoustic barrier material. Sherman teaches that it is known to provide a door with composite material as set forth at column 4, line 14+. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the door of Watson with the composite material, as taught by Sherman in order to damping sound.

6. Claims 14-21 and 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson in view of Bockwinkel and Sherman. Watson discloses the claimed invention except for the labyrinthine seal and the door having an inner portion. Bockwinkel teaches that it is known to provide a door with a labyrinthine seal as set forth at column 6, line 59 to column 7, line 34 and an inner portion as set forth at column 3, lines 35-38. It would have been obvious to one having ordinary skill in the art at the time the invention was made for the seal of Watson to be a labyrinthine seal and an inner portion, as taught by Backfield in order to prevent communication of ambient air through the sealing strip and improve insulation. Further, Watson discloses the claimed invention except for composite acoustic barrier material. Sherman teaches that it is known to provide a door with composite material as set forth at column 4, line 14+. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the door of Watson with the composite material, as taught by Sherman in order to damping sound.

Claim Rejections - 35 USC § 112

7. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, there is insufficient structure to support the function "achieves a sound ... or better" in line 8.

Response to Arguments

8. Applicant's arguments filed December 3, 2004 have been fully considered but they are not persuasive. As to the 112 rejection, applicant maintains that the seal performs the recited sound transmission function; however, there is nothing in the applicant's specification that suggest that the seal achieve the recited sound transmission when the smoke vent is in its closed orientation.

9. As to applicant's argument as it relates to claim 26, applicant specification states that his door is heavily insulated; even without the teaching of Bockwinkel, this does not fall in the area of invention. One cannot conceive of a better way of increasing the sound insulation properties then to heavily insulate. But as far as the rejection goes, Bockwinkel was relied on for the teaching of a labyrinthine seal. As applicant corrected pointed out, Bockwinkel seal between the door and cabinet is to prevent the entry of warm air into the refrigerated zone which is related to the purpose of the seal of Watson.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

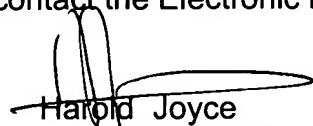
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

As to applicant's arguments that Watson does not achieve the sound transmission class of STC-45 or better; in claim 1, lines 10 and 11, "wherein the acoustical ...or better" is functional language which recites no structure and accordingly cannot serve to patentably define over Watson.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold Joyce whose telephone number is (571) 272-4876. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Harold Joyce
Primary Examiner
Art Unit 3749